

REMARKS

A species restriction under 35 U.S.C. §121 was mailed to the Applicant on October 23, 2006 asserting that the pending claims include two invention groups; namely, Invention Group I including claims 1-92 directed to a medical device, and Invention Group II including claims 93-96 directed to a method of treating a spinal defect. The Applicant hereby elects Invention Group I including claims 1-92.

The restriction requirement further asserts that the pending claims are directed to multiple invention species and subspecies. With regard to Species Restriction I, the Application elects the disc prosthesis species, and more specifically the disc prosthesis species illustrated in Figure 1. However, the Applicant makes this election with traverse. Specifically, the Applicant submits that each of the devices illustrated in Figures 1-8 are disc prostheses (i.e., prostheses configured for insertion within an intervertebral disc space). The Applicant further submits, arguendo, that the devices illustrated in Figures 1-2 and Figures 3-4 comprise two types of disc prostheses (i.e., a two-component prosthesis illustrated in Figures 1-2 and a three-component prosthesis illustrated in Figures 3-4), and that the disc prostheses illustrated in Figures 5-7 (indicated a subspecies A) and Figure 8 (indicated as subspecies B) are in fact subspecies of the generic two-component disc prosthesis illustrated in Figures 1-2. If the foregoing traversal arguments are accepted, in addition to the election of the disc prosthesis species illustrated in Figure 1, the Applicant further elects the disc prosthesis subspecies illustrated in Figures 5-7.

With regard to Species Restriction III associated with dependent claim 2, the Applicant elects the titanium metal matrix. Although the Office Action requires an election of a metallic matrix or a final mixture "from the listing of claim 4", this indication appears to be in error since claim 4 does not provide such a listing. The Applicant has therefore assumed that the Species Restriction III is associated with dependent claim 2, which does recite a listing of metallic matrices and mixtures thereof.

With regard to Species Restriction IV associated with dependent claim 3, the Applicant elects the titanium carbide (TiC) reinforcing component. Although the Office Action requires an election of a reinforcing component or a final mixture "from the listing of claim 5", this indication appears to be in error since claim 5 does not provide such a listing. The Applicant has

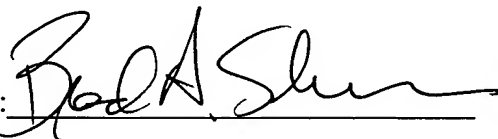
therefore assumed that the Species Restriction IV is associated with dependent claim 3, which does recite a listing of reinforcing components and mixtures thereof.

With regard to Species Restriction V, the Application elects homogeneous dispersion of the reinforcing component throughout the metallic matrix material.

The Applicant submits that claims 1-33, 44, 45 and 49-64 are readable on the elected species and subspecies. Further consideration of the present application in view of the foregoing elections is respectfully requested.

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Respectfully submitted,

By: 

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